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Memo Endorsed

June 18, 2020

Via ECF

The Honorable Ona T. Wang
United States District Court
For the Southern District of New York
500 Pearl Street
New York, NY 10007

Re: Lopez v. Walgreens Boots Alliance, Inc., No. 1:19-cv-9853-PAE-OTW
Request to Stay Pending Appeal in Related Cases

Dear Judge Wang:

We represent defendant Walgreens Boots Alliance, Inc. ("Defendant") in the above-referenced action. Pursuant to Your Honor's Individual Practices, we write jointly with counsel for plaintiff Victor Lopez ("Plaintiff"), respectfully to request the Court stay of discovery in this matter pending the outcome of the appeals filed in *Dominguez v. Banana Republic*, Case No. 20-1559 and other related cases.¹ No party has previously sought a stay of this action.

In support of this request, counsel for the parties state that the resolution of these appeals is likely to have an effect on the course of discovery in this case. The claims in *Banana Republic* and the Related Cases are the same as those asserted by Plaintiff in this action – i.e., that Title III of the ADA, as well as New York State and New York City Law, require retailers such as Defendant to provide Braille versions of their store gift cards. Counsel for the parties in this action also represent the parties in *Banana Republic* and two other defendants in the Related Cases (*AnnTaylor, Inc.* and *Swarovski*).

On April 23, 2020, Judge Woods granted the defendant's motion to dismiss in the *Banana Republic* case. See *Dominguez v. Banana Republic, LLC*, 1:19-cv-10171-GHW, [2020 WL 1950496](#) (S.D.N.Y. Apr. 23, 2020). That motion was based on the same arguments Defendant makes in its motion to

¹ *Mendez v. AnnTaylor, Inc.*, 20-1550; *Calcano v. Swarovski*, 20-1552; *Thorne v. Jersey Mike's Franchise Systems, Inc.*, 20-1588; *Calcano v. Art of Sharing-FL, LLC*, 20-1594; and *Murphy v. Kohl's Department Stores, Inc.*, 20-1608 (hereinafter, the "Related Cases"). Presently before the Court of Appeals is a motion to consolidate *Banana Republic* and the appeals filed by plaintiffs in Related Cases. Defendant-Appellees have not opposed that motion to the extent it seeks consolidation, but have opposed removing the case from the expedited appellate calendar.

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dismiss Plaintiff's Amended Complaint in this action, which is fully briefed and has been referred to the Your Honor for a report and recommendation. (Dkt. Nos. 18, 24-27, 30-31.) For the same reasons set forth in his decision in *Banana Republic*, Judge Woods granted defendants' motions to dismiss in the Related Cases. Plaintiff believes these cases were wrongly decided and has filed an appeal of each in the U.S. Court of Appeals for the Second Circuit.

As resolution of those appeals likely will affect the outcome of Defendant's motion to dismiss in this action, counsel for the parties submit good cause exists to stay discovery in this matter pending the resolution of the appeals in *Banana Republic* and the Related Cases.

We thank the Court in advance for its consideration of this request.

Respectfully submitted,

/s/ Michael F. Fleming

Michael F. Fleming

Attorney for Defendant

cc: All Counsel of Record (via ECF)

Application Granted.

Parties are directed to file a joint status letter within 7 days of the appeal decision.

SO ORDERED.



Ona T. Wang
U.S. Magistrate Judge

6/19/2020